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Attorneys for Debtors-In-Possession,  
FRE 355 INVESTMENT GROUP, LLC and  
MORA HOUSE, LLC

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA - DIVISION 5**

In re:  
  
FRE 355 INVESTMENT GROUP, LLC,  
dba FRE 355,  
  
Debtor.

Case No. 20-50628-SLJ  
Cases Jointly Administered  
Chapter 11

In re  
  
MORA HOUSE, LLC,  
  
Debtor.

Case No. 20-50631-SLJ  
Chapter 11  
Initial Status Conference  
Date: October 7, 2020  
Time: 2:00 p.m.  
Courtroom: 9  
Tele/Video Appearance

**OBJECTIONS TO CLAIMS OF PLATINUM LOAN SERVICING**  
**(Claim #4 in both cases)**

Comes now Debtors FREE 355 INVESTMENT GROUP, LLC ("FRE 355") and  
MORA HOUSE, LLC ("Mora") and do hereby object to the Proofs of Claim filed by  
Platinum Loan Servicing ("Creditor" or "Platinum") which filed claims in both cases as  
Claim #4 (the "Claims" and each of them the "Claim") as follows:

1           1.       In each case, Creditor's Claim is in the total amount of \$13,264,318.71. A  
2 true and correct copy of Claim No. 4 filed by Creditor in the case of FRE 355 is attached  
3 hereto as Exhibit "A" and is incorporated herein by reference. A true and correct copy of  
4 Claim No. 4 filed by Creditor in the case of Mora is attached hereto as Exhibit "B" and is  
5 incorporated herein by reference.

6           2.       Creditor includes in the attachments to each of its Claims a single page  
7 identified as a "Beneficiary's Demand for Payment" dated 7/28/2020 immediately  
8 followed by a single page "Itemization of Unpaid Charges" and two pages identified as a  
9 "Borrower Statement of Account."

10          3.       The Debtors object to the Claims of Creditor in both bankruptcy cases for  
11 the following reasons:

12          A.       Beginning at page 4 of each of the Claims is an attachment identified as a  
13 "Beneficiary's Demand for Payment" dated 7/27/2020 which includes, among other  
14 things, the following two lines of charges for interest which dates appear to be  
15 overlap and therefore are duplicative:

16 "Unpaid Default Interest from 2/1/20 to 8/1/20 @ \$45,584.74 per month \$319,093.25"

17 "Accrued Interest from 8/1/19 to 7/28/20       \$1,658,521.58"

18 The Debtors object to both Claims insofar as these two elements of the Claims  
19 containing interest appear to be overlapping and therefore duplicative.

20          B.       Page 4 attached to each of the Claims identified as a "Beneficiary's  
21 Demand for Payment" dated 7/27/2020 includes, among other things, the following  
22 two lines of charges for late charges which appear to be overlap and therefore are  
23 duplicative:

24 "Unpaid Late Charges       \$86,587.38"

25 "Accrued Late Charges     \$150,399.04"

26 The Debtors object to both Claims insofar as these two elements of the Claims  
27 regarding late charges appear to be overlapping and therefore duplicative.

1 C. Page 4 attached to each of the Claims identified as a "Beneficiary's  
2 Demand for Payment" dated 7/27/2020 includes, among other things, the following  
3 line item:

4 "Unpaid Charges (see itemization attached) \$112,672.46"

5 The Itemization of Unpaid Charges that follows as page 5 attached to each of the  
6 Claims identifies numerous line items consisting of "Advanced Trustee Fees",  
7 "SBS Trust Deed Fees", "Defaulted Late Fees", "Advanced Appraiser Fees",  
8 "Advanced Lawyer Fees (Landau)", "Lawyer Fees Landau" and "Advance Lawyer  
9 Fees".

10 D. The Debtors object to the "Unpaid Charges" of \$112,672.46 and to each of  
11 the specific line items contained in the supporting attachment insofar as such  
12 charges appear to be duplicative of the other late charges, including "defaulted  
13 late fees" of \$18,228.32 which would appear to be duplicative of the "Unpaid Late  
14 Charges" of \$86,587.38 and the "Accrued Late Charges" of \$150,399.04.

15 E. The Debtors further object to the "Advanced Trustee Fees" and "SBS Trust  
16 Deed Fees" identified in the Itemization of Unpaid Charges contained on page 5  
17 attached to each of the Claims in the following amounts:

18 Advance Trustee Fees

<u>Date</u>	<u>Amounts</u>
4/15/2019	\$17,538.34
4/15/2019	\$5,062.91
2/14/2020	\$423.87
2/14/2020	\$1,790.35
2/14/2020	\$1,705.12
2/14/2020	\$4,177.69
2/14/2020	\$14,471.84
2/14/2020	\$852.48
7/15/2020	\$8,028.69
Total	\$54,051.29

1 The Debtors object to the asserted Advanced Trustee Fees and SBS Trust Deed  
2 Fees due to the failure of Creditor to provide any supporting documents for such  
3 alleged unpaid charges, such as statements and evidence of payment by Creditor.  
4 F. The Debtors further object to the “Advanced Lawyer Fees (Landau)”,  
5 “Lawyer Fees Landau” and “Advance Lawyer Fees” (collectively the “Lawyer’s  
6 Fees”) identified in the Itemization of Unpaid Charges contained on page 5  
7 attached to each of the Claims asserted by Creditor and identified in the following  
8 amounts:

9

<u>Lawyer's Fees</u>			
<u>Date</u>	<u>Fees</u>	<u>Interest</u>	<u>Total</u>
7/8/2020	\$1,564.00	\$13.69	\$1,577.69
7/15/2020	\$6,000.00		\$6,000.00
7/16/2020	\$22,067.00	\$119.53	\$22,186.53
	Total		\$29,764.22

13  
14 In addition, the “Borrower’s Statement of Account” which begins on page 6  
15 attached to each of the Claims asserted by Creditor, identifies different amounts  
16 for Lawyer’s Fees as follows:

17

<u>Date</u>	<u>Fees</u>
7/8/2020	\$1,564.00
7/15/2020	\$17,106.00
7/16/2020	\$22,067.00
Total	\$40,737.00

20  
21 The Debtors object to all asserted Lawyer’s Fees due to the failure of Creditor to  
22 provide any supporting documents for such alleged unpaid charges, such as  
23 statements of services rendered, invoices and evidence of payment by Creditor.  
24 The Debtors further object to the inconsistent amount of Lawyer’s Fees as  
25 between the Itemization of Unpaid Charges and the Borrower’s Statement of  
26 Account, both provided by Creditor allegedly in support of the Claims. The Debtors  
27 further object that any such Lawyer’s Fees are excessive in light of the lack of any  
28 factual support for such asserted Lawyer’s Fees. The Debtors further object that

1 the asserted interest on such alleged Lawyer's Fees as reflected in the Itemization  
2 of Unpaid Charges is not properly calculated and/or at an incorrect rate according  
3 to the Note, if any interest is permitted at all.

4 G. The Debtors further object to the fees regarding "Advanced Appraiser Fees"  
5 (the "Appraisal Fees") asserted by Creditor and identified in the following amounts:  
6

7 Advanced Appraisal Fees

<u>Date</u>	<u>Fees</u>	<u>Interest</u>	<u>Total</u>
7/6/2020	\$10,500.00	\$100.63	\$10,600.63

9  
10 The Debtors object to the asserted Appraisal Fees due to the failure of Creditor to  
11 provide any supporting documents for such alleged unpaid Appraisal Fees, such  
12 as statements, invoices and evidence of payment by Creditor. The Debtors further  
13 object that the asserted interest on such alleged Appraisal Fees is not properly  
14 calculated and/or at an incorrect rate according to the Note, if any interest is  
15 permitted at all.

16 F. In addition, the Debtors object to the interest rate of 15% identified in  
17 connection with certain lines on the Itemization of Unpaid Charges for "Advanced  
18 Appraisal Fees" and "Advanced Lawyer Fees (Landau)" and "Advanced Lawyer  
19 Fees" The copy of the Note Secured By A Deed Of Trust (the "Note") also  
20 attached to the Claims includes a provision for a default rate of interest identified  
21 in paragraph 9 of the Note that is 5% higher than the Note interest rate which is  
22 stated as 10.0%. In addition, the Note further states at paragraph 9 that, "[t]he  
23 Default Rate will automatically apply to all interest accrued thereafter without  
24 demand by the Note Lender." This default rate provision however does not  
25 provide for the default rate of interest to apply to trustee's fees, appraiser fees  
26 and/or lawyer fees incurred by Creditor. Accordingly, the Debtors object to the  
27 Claims insofar as Creditor has applied a default rate of interest to Advanced  
28

1 Trustees Fees, Appraiser Fees, Lawyer's Fees or any other element of the Claims  
2 other than defaulted interest.

3 **POINTS AND AUTHORITIES**

4 **A. Creditor has the burden to prove its Claims.**

5 A properly-filed proof of claim constitutes *prima facie* evidence of the validity and  
6 the amount of the claim pursuant 11 U.S.C. Section 502(a). Federal Rule of Bankruptcy  
7 Procedure 3001(f) requires that, if a claim is based on a writing, the writing must be  
8 provided with the proof of claim. In order to defeat a claim, the objecting party must  
9 "produce evidence and show facts tending to defeat the claim by probative force equal to  
10 that of the allegations of the proof of the claims themselves." *In re Holm* 931 F.2d 620,  
11 623 (9th Cir. 1991) (*internal citation omitted, emphasis added.*) If the objecting party  
12 produces sufficient evidence to negate one or more of the facts in the proof of claim, the  
13 burden reverts to the claimant to prove the validity of the claim by a preponderance of the  
14 evidence. *Ashford v. Consolidated Pioneer Mort. (In re Consolidated Pioneer Mort., 178*  
15 *B.R. 222, 226 (9th Cir. B.A.P. 1995).*

16 **B. The Debtors have presented evidence negating one or more facts of each**  
17 **Claim asserted by Creditor.**

18 As asserted by the Debtors herein, there are numerous instances of contradictory  
19 evidence presented in the Claims, such as the inclusion of multiple instances of interest  
20 and late charges for time periods that appear, on their face, to be duplicative and  
21 overlapping. In addition, the Claims lack supporting evidence for amounts asserted for  
22 Lawyer's Fees, Appraisal Fees and Advanced Appraiser Fees and other fees and  
23 charges that lack supporting documentation as to their nature and calculations. Finally,  
24 the Claims appear to include default rate interest on certain charges that is not permitted  
25 by the terms of the Note. The burden of proof is on Creditor to provide evidence to  
26 support such elements of its Claims.

27 WHEREFORE, the Debtors pray that the Court disallow and/or reduce the Claims  
28 by the following amounts as is appropriate and according to proof:

- 1 (1) Accrued Interest from 8/1/19 to 7/28/20 of \$1,658,521.58 due to duplicate interest  
2 being included by Creditor;
- 3 (2) "Accrued Late Charges of \$150,399.04 due to duplicate late charges;
- 4 (3) "Defaulted late fees" of \$18,228.32 due to duplicate late charges;
- 5 (4) "Advanced Trustee Fees," Advanced Lawyer Fees (Landau)" and "Advanced  
6 Lawyer Fees" and interest thereon due to lack of proof and as contradicting the  
7 provisions of the Note;
- 8 (5) And for such other and further relief as the Court deems just and proper.

9 Dated: August 31, 2020

BINDER & MALTER, LLP

10 By: /s/ Julie H. Rome-Banks  
11 Julie H. Rome-Banks  
12 Attorneys for Debtors  
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